that the adherence to the practice settled in both houses in 1789 resulted from a mere blind application of an existing rule, a conclusion which is also clearly manifested, as to the Senate, by proceedings in that body in 1861 where, on the passage of a pending amendment to the Constitution, as the result of an inquiry made by Mr. Trumbull relative to the vote required to pass it, it was determined by the Senate by a vote of 33 to 1 that two-thirds of a quorum only was essential. 36 Cong. (2d. Sess.) March 2, 1861, Senate Journal, 383.

In consequence of the identity in principle between the rule applicable to amendments to the Constitution and that controlling in passing a bill over a veto, the rule of two-thirds of a quorum has been universally applied as to the two-thirds vote essential to pass a bill over a veto. In passing from the subject, however, we again direct attention to the fact that in both cases the continued application of the rule was the result of no mere formal following of what had gone before but came from conviction expressed, after deliberation, as to its correctness by many illustrious men.

While there is no decision of this court covering the subject, in the state courts of last resort the question has arisen and been passed upon, resulting in every case in the recognition of the principle that, in the absence of an express command to the contrary, the two-thirds vote of the house required to pass a bill over a veto is the two-thirds of a quorum of the body as empowered to perform other legislative duties. Warehouse *v.* McIntoch, 1 Ala. App. 407, 56 South. 102; State *v.* McBride, 4 Mo. 303, 29 Am. Dec. 636; Southworth *v.* Railroad, 2 Mich. 287; Smith *v.* Jennings, 67 S. C. 324, 45 S. E. 821; Green *v.* Weller, 32 Miss. 650."

Wills—Revocation—Requesting Destruction by Third Party.—In the case of In the Matter of McGill, 61 N. Y. Law J. 275, it appeared that testatrix made a will giving her property to one Thomas Hart, and that shortly before her death she sent her attorney a writing, signed by herself, and witnessed by two witnesses, which read: "Please destroy the will I made in favor of Thomas Hart." Before the attorney had an opportunity of carrying out the request the testatrix died. In answer to the contention that the writing was a revocation of the will the court said: "If the decedent intended to revoke the will by executing the instrument in question, why was the document directed to O'Kennedy, and why did she ask him to destroy it? The physical destruction of the instrument would add nothing to the effect of the revocation. If the instrument revoked the will nothing that was done to the document could in any way have the slightest effect upon its further validity. As a testamentary distribution recognizable in law it would have ceased to exist the mo-

ment the instrument of revocation was executed. Let us assume that this document had been destroyed by the testatrix after she executed it and before its delivery to O'Kennedy. Would anyone argue that the will was of no further validity? Yet, if the instrument effectuated the revocation of the will, its subsequent destruction would not reinstate the will.

"It may perhaps be asked what was the necessity of witnessing this instrument if it was only a letter and not a document declaring a revocation as provided by statute. The decedent evidently thought that O'Kennedy had a right to destroy the will even after her death, and it might well be that she had the two persons sign in order to satisfy O'Kennedy that her signature to the paper was genuine. If there had been something in the nature of an attestation clause attached, there might be some force in the contention that the signing of the two witnesses was an indication that the decedent intended by the document itself to revoke the will. But without such a clause I do not think that the fact that it bears the signature of two witnesses is inconsistent with the holding that the paper was a written direction to destroy and not an instrument declaring a revocation of the will."

In Tynan *v.* Paschal, 27 Tex. 286, 303, it was held that a letter from a testator to his agent directing him to destroy the testator's will did not, ipso facto, operate as a revocation of the will. In this case the court said: "It is plausibly and ingeniously urged that this letter was a declaration, in writing, by the testator, written wholly by himself, directing its cancellation. We cannot, however, yield our assent to this position. The leading rule to guide in determining the construction to be placed upon all acts as well as instruments, and more especially those of a testamentary character, is the intention of the parties. Did the decedent intend, by this letter to his attorney, an immediate exercise of his right to revoke his will, by an instrument in writing executed in the same manner necessary for publishing a new will? The testimony of the witness does not induce the belief that this is the fair or reasonable construction of the letter. Such was not the construction placed upon it by the witness, to whom it was directed, or by the writer of it himself. The manifest intention of the writer, and clear import of the letter, was, that the attorney to whom it was directed should revoke the will by its cancellation, or destruction. And in such cases, it is not denied that the will remains in force, unless the cancellation, or destruction, is carried into effect."